

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

Thomas Harvey Plaintiff)	Civil Action No.
v.)	2:07cv327-TJW-CE
APPLE, INC.)	
Defendant)	

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO TRANSFER**

Plaintiff opposes Defendant's motion to transfer as untimely and submitted for the purpose of delay, not convenience.

This matter was filed on August 6, 2007 and has been pending in The United States District Court for the Eastern District of Texas for two years, without objection to venue by Defendant. Nor has Defendant raised any inconvenience issues with respect to this Court. Now, as this case rapidly approaches its Markman hearing in less than ninety days (October 28, 2009) Defendant wants to transfer this matter to California and start the process all over again.

None of the facts alleged in Defendant's Motion to transfer are new. All of the alleged arguments of convenience existed two years ago when this matter was filed in the Eastern District of Texas, yet none of this issues was raised by Defendant during the two year pendency of this matter.

Defendant has accepted the jurisdiction and venue of this Court and the parties have relied upon the orderly progression of this matter without a single word of concern or objection from Defendant. To transfer this matter to another Court to begin the schedule anew would work an extreme injustice upon Plaintiff, significantly increasing costs and delaying the resolution of

this matter potentially by a few more years.

CONCLUSION

The Court should deny Defendant's motion to transfer and this case should proceed forward as currently scheduled in the United States District Court for the Eastern District of Texas.

Respectfully submitted,

/s/ Joseph J Zito
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above pleading is being filed through the CM/ECF System of the Eastern District of Texas on this 2nd day of August, 2009, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV5(a)(3). The undersigned is not aware of any other counsel nor any unrepresented parties in this matter and no service has been effected by any other means, including facsimile transmission, e-mail and/or first class mail.

/s/ Joseph J Zito
Joseph J. Zito